

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

**Case No. 3:08-cr-041
Also Case No. 3:12-cv-397**

Plaintiff,

-v-

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

EVERARDO RODRIQUEZ-VILCHIS,

Defendant.

ENTRY AND ORDER OVERRULING RODRIQUEZ-VILCHIS' OBJECTIONS (Doc. #241) TO THE MAGISTRATE JUDGE'S SECOND SUPPLEMENTAL REPORT AND RECOMMENDATIONS; ADOPTING THE MAGISTRATE JUDGE'S SECOND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. #238) IN ITS ENTIRETY; DISMISSING RODRIQUEZ-VILCHIS' § 2255 MOTION (Doc. #209) WITH PREJUDICE; DENYING A CERTIFICATE OF APPEALABILITY AND CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS

Pro Se Defendant Everardo Rodriquez-Vilchis ("Rodriquez-Vilchis") filed a Motion To Vacate pursuant to 28 U.S.C. § 2255. (Doc. #209.) On December 3, 2012, Magistrate Judge Michael R. Merz issued a Report and Recommendations (doc. #210) recommending that Rodriquez-Vilchis' 2255 Motion be denied. Rodriquez-Vilchis objected. (Doc. #211.) This matter was then recommitted to Magistrate Merz (doc. #212) who then withdrew the Report and Recommendations and ordered Rodriquez-Vilchis to supplement his 2255 Motion (doc. #213). When Rodriquez-Vilchis failed to respond, Judge Merz issued a Supplemental Report and Recommendations again recommending that Rodriquez-Vilchis' 2255 Motion be denied. (Doc. #214.) Rodriquez-Vilchis objected. (Doc. #215.) This matter was again recommitted to Magistrate Merz (doc. #217) who withdrew his Supplemental Report and Recommendations

(doc. #225).

After further briefing, Magistrate Merz issued his Second Supplemental Report and Recommendations on July 18, 2013. (Doc. #238.) Therein, Magistrate Merz recommends that Rodriquez-Vilchis' 2255 Motion be Dismissed with prejudice, that Rodriquez-Vilchis be denied a certificate of appealability and that the Court certify that any appeal would be objectively frivolous.

Rodriquez-Vilchis has Objected (doc. #241) and the time has run and the Government has not responded to this Objection. This matter is, therefore, ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Rodriquez-Vilchis' Objections to the Magistrate Judge's Second Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Second Supplemental Report and Recommendations is adopted in its entirety.

Rodriquez-Vilchis' § 2255 Motion is dismissed with prejudice. Further, Rodriquez-Vilchis is denied a certificate of appealability. Finally, any appeal would be objectively frivolous.

DONE and ORDERED in Dayton, Ohio, this 9th day of September, 2013.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Everardo Rodriquez-Vilchis at his last address of record